Supreme Court, U.S.
FILED
AUG 27 1992
OFFICE OF THE CLERK

(2)

No. 92-45

In the Supreme Court of the United States

OCTOBER TERM, 1992

HARRY S. STONEHILL, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

KENNETH W. STARR
Solicitor General

JAMES A. BRUTON
Acting Assistant Attorney General

WILLIAM S. ESTABROOK
JOHN J. MCCARTHY
Attorneys

Department of Justice
Washington, D.C. 20530
(202) 514-2217

QUESTION PRESENTED

Whether, under Rule 60(b)(5) of the Federal Rules of Civil Procedure, petitioner is entitled to relief from the money judgment entered against him in 1980.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Statement	2
Argument	3
Conclusion	6

TABLE OF AUTHORITIES

Cases:

Decker v. *United States*, 531 F.2d 543 (Ct. Cl. 1976)	5
Dias v. *Bank of Hawaii*, 732 F.2d 1401 (9th Cir. 1984)	4
Kassman v. *American University*, 546 F.2d 1029 (D.C. Cir. 1976)	5
Montana v. *United States*, 440 U.S. 147 (1979)	4
Redfield v. *Insurance Co. of North America*, 940 F.2d 542 (9th Cir. 1991)	4
Snowden v. *D. C. Transit System, Inc.*, 454 F.2d 1047 (D.C. Cir. 1971)	5
Sunderland v. *City of Philadelphia*, 575 F.2d 1089 (3d Cir. 1978)	5
United States v. *Stonehill*, 702 F.2d 1288 (9th Cir. 1983), cert. denied, 465 U.S. 1079 (1984)	2
William Skillings & Associates v. *Cunard Transportation, Ltd.*, 594 F.2d 1078 (5th Cir. 1979)	4
Willits v. *Yellow Cab Co.*, 214 F.2d 612 (7th Cir. 1954)	4

Rules:

Fed. R. Civ. P.:	
Rule 59(e)	4
Rule 60(b)(1)	4
Rule 60(b)(5)	2, 3, 4, 5, 6

In the Supreme Court of the United States

OCTOBER TERM, 1992

No. 92-45

HARRY S. STONEHILL, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A5) is unpublished, but the judgment is noted at 959 F.2d 243 (Table). The opinion of the district court (Pet. App. A8-A14) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on April 7, 1992. The petition for rehearing was denied on May 14, 1992 (Pet. App. A6). The petition for a writ of certiorari was filed on July 6, 1992. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Between 1958 and 1961, petitioner Harry S. Stonehill (petitioner) received millions of dollars "from illegal and unrecorded sources." *United States* v. *Stonehill*, 702 F.2d 1288, 1291 (9th Cir. 1983), cert. denied, 465 U.S. 1079 (1984). Petitioner failed to report and pay taxes on that income. In 1980, the district court determined that petitioner's outstanding obligation for taxes, penalties and interest for these years was $8,984,668, and entered judgment accordingly (Pet. App. A11). That judgment was affirmed by the Ninth Circuit (702 F.2d 1288) and a petition for a writ of certiorari was denied by this Court (465 U.S. 1079).

2. Prior to entry of the district court judgment, the United States levied upon various of petitioner's assets in an effort to secure satisfaction of his tax obligations. Some of that property has been sold, and the proceeds distributed; some remains in receivership. In connection with the receivership conducted in the Northern District of California, petitioner moved under Rule 60(b)(5) of the Federal Rules of Civil Procedure for a declaration that the judgment in favor of the United States has been satisfied and that the property held by the receiver should therefore be released to petitioner (Pet. App. A9).

Petitioner based his motion on the assertion that the 1980 judgment did not properly reflect "credits for payments that had been made" before that judgment was entered (Pet. 20) (emphasis omitted). Petitioner contends that, if credit for such payments had been reflected in the 1980 judgment, the total of the payments made "before and after the 1980 judgment" were sufficient to satisfy his tax obligations (*ibid.*).

The district court rejected petitioner's claim (Pet. App. A8-A14). The court held that petitioner is bound by the 1980 judgment and cannot, in a Rule 60(b)(5) motion, relitigate that final adjudication of his then-outstanding tax liabilities (Pet. App. A12-A14). Since the United States has not received sufficient payments after the judgment to satisfy it, petitioner is not entitled to relief from the judgment under Rule 60(b)(5).

3. The court of appeals affirmed (Pet. App. A1-A5). The court concluded that, by seeking credit for payments allegedly made before the 1980 judgment —but allegedly not reflected in it—petitioner is "attempting to alter or amend the judgment entered [in 1980]" (*id.* at A3). While relief of that character, if warranted, would have been available "by way of a timely Rule 59(e) motion, or a timely Rule 60(b)(1) or (b)(2) motion, or on direct appeal" (Pet. App. A3), such relief is not available under Rule 60(b)(5), which authorizes relief from a judgment that "has been satisfied" (Pet. App. A3, quoting Fed. R. Civ. P. 60(b)(5)). The court concluded that Rule 60(b)(5) does not authorize petitioner to challenge the accuracy of the 1980 judgment "ten years after entry of that judgment" (Pet. App. A4). Since the payments made after the judgment were not sufficient to satisfy it, the court held (*id.* at A4-A5) that petitioner is not entitled to relief from the judgment under Rule 60(b)(5).

ARGUMENT

The decision of the court of appeals is correct and does not conflict with any decision of this Court or of any other court of appeals. Further review is therefore not warranted.

1. Judgment against petitioner in the amount of $8,984,668 for outstanding taxes, penalties and interest was entered on October 14, 1980, was affirmed on

appeal to the court of appeals, and this Court denied certiorari. It is, of course, well established that *res judicata* precludes petitioner's efforts to relitigate the correctness of that judgment. See *Montana* v. *United States*, 440 U.S. 147 (1979). The court of appeals correctly concluded (Pet. App. A3-A4) that Rule 60(b)(5) of the Federal Rules of Civil Procedure cannot be employed to circumvent the binding effect of the 1980 judgment.

Rule 60(b)(5) provides that "[o]n motion and upon such terms as are just, the court may relieve a party * * * from a final judgment [on the ground that] * * * the judgment has been satisfied * * * ." Fed. R. Civ. P. 60(b)(5). Post-judgment payments or actions that satisfy the judgment may thus be urged as a basis for relief from the judgment under the Rule. See, *e.g.*, *Redfield* v. *Insurance Co. of North America*, 940 F.2d 542 (9th Cir. 1991); *Dias* v. *Bank of Hawaii*, 732 F.2d 1401 (9th Cir. 1984). But the claim that "the judgment was erroneous, or rendered by mistake or inadvertence" (Pet. App. A3)—because it allegedly failed to give credit for payments made *before* the judgment was entered—constitutes a collateral attack on the judgment that is not authorized by Rule 60(b)(5). Petitioner was entitled to raise his challenge to the 1980 judgment "by way of a timely Rule 59(e) motion, or a timely Rule 60(b)(1) or (b)(2) motion, or on direct appeal" (Pet. App. A3). But the courts consistently have concluded that relief under Rule 60(b)(5) is not available when the party's contentions properly could have been raised and considered in a timely Rule 59(e) or 60(b)(1) motion. See *William Skillings & Associates* v. *Cunard Transportation, Ltd.*, 594 F.2d 1078 (5th Cir. 1979); *Willits* v. *Yellow Cab Co.*, 214 F.2d 612 (7th Cir. 1954). The court of appeals correctly applied that settled rule in this case.

2. Petitioner errs in asserting (Pet. 22, 23) that, in *Sunderland* v. *City of Philadelphia*, 575 F.2d 1089 (3d Cir. 1978), *Kassman* v. *American University*, 546 F.2d 1029 (D.C. Cir. 1976), and *Snowden* v. *D.C. Transit System, Inc.*, 454 F.2d 1047 (D.C. Cir. 1971), the courts of appeals authorized relief on Rule 60(b)(5) motions that had the effect of correcting or altering a prior, final judgment. In *Sunderland*, although the underlying facts are not clearly set forth in the court's opinion, it appears that the defendant paid the sum of $7500 *after* the adverse judgment was entered; in this context, the court held that the defendant was to receive credit for that payment under Rule 60(b)(5). See 575 F.2d at 1090-1091. In *Kassman* and *Snowden*, the defendants obtained credits that reduced the amount of the judgments *on direct appeals from those judgments*. See 546 F.2d at 1030, 1033 (the claim for a credit was raised "prior to entry of the judgment"); 454 F.2d at 1049. Nothing in these cases suggests that the courts are empowered by Rule 60(b)(5) to ignore principles of *res judicata* and alter or amend a judgment based upon a "motion filed ten years after entry of that judgment" (Pet. App. A4).*

Petitioner further errs in contending (Pet. 25) that the decision in this case conflicts with *Decker* v. *United States*, 531 F.2d 543 (Ct. Cl. 1976). *Decker* hold that a taxpayer against whom a fraud penalty is asserted is not liable for interest on the penalty until the Tax Court decision is entered against him. Petitioner claims (Pet. 26) that the interest awarded under the 1980 judgment did not properly reflect that

---

* Petitioner's suggestion that application of *res judicata* to deny the relief requested in this case violates due process (Pet. 15-19) is frivolous. The 1980 judgment that petitioner desires to relitigate was the result of a full and fair adversary proceeding to which he was a party.

principle, but that claim is irrelevant to this case. The 1980 judgment—which was affirmed on appeal and which this Court declined to review by certiorari—is final and binding on the parties. Any determination with regard to interest on fraud penalties reflected in that judgment is no longer open to review. Nothing in the decision in this case—denying petitioner's request for relief under Rule 60(b)(5)—in any manner conflicts with *Decker* or with any other decision.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

KENNETH W. STARR
Solicitor General

JAMES A. BRUTON
Acting Assistant Attorney General

WILLIAM S. ESTABROOK
JOHN J. MCCARTHY
Attorneys

AUGUST 1992